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Attorney General of Hawai'i

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HAWAII LABOR
RELATIONS BOARD

Attorneys for Director, Department
of Labor and Industrial Relations

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of DIRECTOR,)	CASE NO. OSH 2009-41
)	
DEPARTMENT OF LABOR AND)	STIPULATION AND SETTLEMENT
INDUSTRIAL RELATIONS,)	AGREEMENT; EXHIBIT A; APPROVAL
)	AND ORDER
Complainant,)	
)	
vs.)	
)	
MANDARA SPA,)	
)	
<u>Respondent.</u>)	

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director, Department of Labor and Industrial Relations ("Director") and Respondent Mandara Spa ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawai'i Labor Relations Board ("Board") stipulate and agree as follows:

On or about May 6, 2009 to June 3, 2009, the Director, by and through the State of Hawai'i's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 2005 Kalia Road, Honolulu, Hawaii 96815.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on November 2, 2009 ("Citation") to Respondent alleging a violation of the Hawai'i Occupational Safety and Health Standards and assessed an aggregate penalty of \$00.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawai'i Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 2005 Kalia Road, Honolulu, Hawaii 96815.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirement of HRS chapter 396, the Hawai'i Occupational Safety and Health Law.
4. Respondent agrees that it has abated each violation listed in the Citation in compliance with the abatement requirements under Hawai'i Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH not more than ten (10) days after this Stipulation and Settlement Agreement ("Agreement") is filed; failure to timely do so may result in additional penalties or follow up inspections.
5. The violation and corresponding characterization as stated in the Citation are affirmed. *See* Exhibit A.

6. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

7. By entering into this Agreement, Respondent does not admit that it violated the cited standards for any litigation or purpose other than proceedings under the Hawai'i Occupational Safety and Health Law.

8. Respondent shall continue to comply with HRS chapter 396, the Hawai'i Occupational Safety and Health Law, and the related rules.

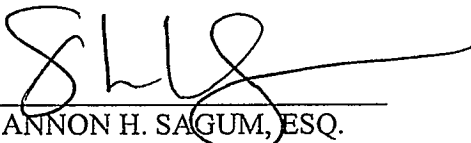
9. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawai'i Occupational Safety and Health Law, or the related rules.

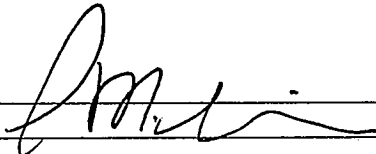
10. The Parties agree that upon the approval of this Agreement by the Board, the Board shall dismiss this case and Respondent's appeal.

DATED: Honolulu, Hawaii, May 20, 2010.

APPROVED AS TO FORM:

MANDARA SPA


SHANNON H. SAGUM, ESQ.
Attorney for Respondent

By: 
Its: _____



Ludvig M. Simonsen, PHR
Regional Manager, Human Resources-Pacific Region
Mandara Spa, LLC

APPROVED AS TO FORM:



J. GERARD LAM
Deputy Attorney General

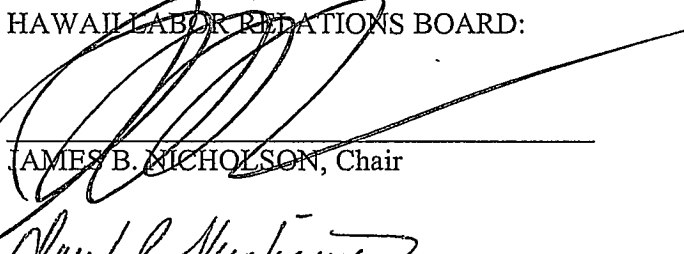
Attorney for Director
Department of Labor and
Industrial Relations, State of Hawai'i

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS, STATE OF
HAWAII



DARWIN L.D. CHING

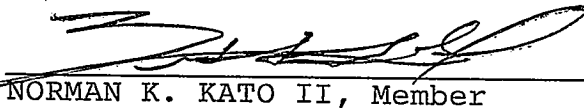
APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:



JAMES B. NICHOLSON, Chair



SARAH R. HIRAKAMI, Member



NORMAN K. KATO II, Member

ORDER NO. 392

DATED: May 28, 2010

In re: Director, Dept. Of Labor And Indus. Relations v. Mandara Spa, Case No. OSH 2009-41,
Stipulation And Settlement Agreement; Exhibit "A"; Approval And Order.

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813
Phone: (808)586-9090 FAX: (808)586-9104



Certified Number: 7006 2150 0004 4122 1621

Citation and Notification of Penalty

To:	Inspection Number: 313076945 (Arthur Talacai)
Mandara Spa and its successors 2005 Kalia Rd Honolulu, HI 96815	Inspection Date(s): 05/06/2009- 06/03/2009 Issuance Date: 11/02/2009 OSHSO ID: R1835 Optional Report No.: 2409 Inspection Type: Complaint Scope of Inspection: Partial Inspection

Inspection Site:
2005 Kalia Rd
Honolulu, HI 96815

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.

ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

Mandara Spa
2005 Kalia Rd
Honolulu, HI 96815

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

The hazard referenced in Inspection Number _____ for the violation identified as
Citation _____ and Item _____ was corrected on _____.
How corrected: _____

I attest that the information contained in this document is accurate and that the affected employees and their
representatives have been informed of the abatement activities described in this certification.

Signature

Typed or Printed Name

State of Hawaii

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on

11/02/2009. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.



Citation and Notification of Penalty

Company Name: Mandara Spa
Inspection Site: 2005 Kalia Rd, Honolulu, HI 96815

Citation 1 Item 1 Type of Violation: Other

HAR §12-202-1(c) was violated because:

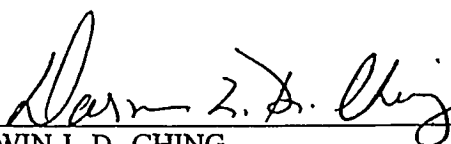
~~The employer did not post or make available to Massage Therapists, Aestheticians, and Concierges information regarding hazards posed by toxic materials or harmful physical agents in the workplace. The information that was not posted or made available include suitable precautions and symptoms related to indoor mold.~~

§12-202-1(c) states "Employers shall post prominently or make available to affected employees information regarding hazards posed by toxic materials or harmful physical agents in the employer's workplace. The information shall include suitable precautions, relevant symptoms, emergency treatment in case of overexposure, and, where appropriate, the availability of medical examination at no cost to the employee."

Location: Third Floor, Treatment Rooms

Date By Which Violation Must be Abated:
Penalty:


12/07/2009
\$ 0.00



DARWIN L.D. CHING
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

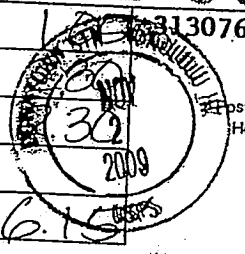
11/23/09

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		<p>A. Signature  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by: (Printed Name) Rodney A. Nishikawa</p> <p>C. Date of Delivery 11/23/09</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>1. Article Addressed to: 313076945</p> <p>Ms. Kathleen Forceville Spa Director Mandara Spa At Hilton Hawaiian Village 2005 Kalia Road Honolulu, Hawaii 96815</p>		<p>3. Service Type: <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7006 2150 0004 4122 1621</p>			

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

7006 2150 0004 4122 1621

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Health	Postage \$ 313076945
	Certified Fee
	Return Receipt Fee (Endorsement Required)
	Restricted Delivery Fee (Endorsement Required)
	Total Postage & Fees \$ 6.15
<p>Sent To: Mandara Spa</p> <p>Street, Apt. No., or PO Box No. 2005 Kalia Road</p> <p>City, State, ZIP+4 Honolulu, Hawaii 96815</p>	
PS Form 3800, August 2006 See Reverse for Instructions	



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Citation and Notification of Penalty

Company Name: Mandara Spa
Inspection Site: 2005 Kalia Rd, Honolulu, HI 96815

SUMMARY OF PENALTIES

Summary of Penalties for Inspection Number 313076945

Citation 1, Other	= \$	0.00
TOTAL PENALTIES	= \$	0.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.